CASES CITED

	PAGE
Chapman, In re, 166 U. S. 661 (1897)	4
Harriman v. Interstate Commerce Commission, 211 U. S. 407 (1908)	4
Interstate Commerce Commission v. Brimson, 153 U. S. 447, 478 (1894)	4
Kilbourn v. Thompson, 103 U. S. 68 (1881)	3, 4
McGrain v. Daugherty, 273 U. S. 135 (1927)	4
Sinclair v. United States, 279 U. S. 263, 293 (1929)	4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 248

JOHN HOWARD LAWSON,

Petitioner,

vs.

UNITED STATES OF AMERICA.

No. 249

DALTON TRUMBO,

Petitioner,

vs.

UNITED STATES OF AMERICA.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

MEMORANDUM OF THE AMERICAN JEWISH CONGRESS AND THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE AS AMICI CURIAE IN SUPPORT OF THE PETITIONS

The undersigned organizations respectfully urge that the petitions for writs of certiorari in the above cases be granted so that there may be a final determination of the issue whether a witness, subpoenaed before the House

Committee on Un-American Activities, may be punished for refusal to answer the question: "Are you a member of the Communist Party?" Counsel for petitioners and respondent have consented to the filing of this memorandum.

The American Jewish Congress was organized "to safeguard the civic, political, economic and religious rights of Jews everywhere" and "to help preserve, maintain and extend the democratic way of life in the United States." The American Jewish Congress is, therefore, utterly opposed to totalitarianism because it is inconsistent with democracy. It is further opposed because it recognizes that totalitarianism, whether of the right or the left, is peculiarly the foe of Jewish survival. The former seeks and achieves the destruction of the Jew through degradation and persecution. The latter renders Jewish survival impossible by proscribing the free development of Jewish cultural and spiritual values without which Jewish existence cannot be maintained.

The National Association for the Advancement of Colored People is a membership organization which for forty years has dedicated itself to and worked for the achievement of a functioning democracy as well as equal justice under the Constitution and laws of the United States.

A great number of the motion pictures to the production of which petitioners contributed consistently showed the Negro minority group in a truer light than it had previously enjoyed. Far from being un-American in character, these pictures were among the first to portray an unstereotyped Negro. Therefore, the National Association for the Advancement of Colored People believes that the attack on petitioners is in part an attack on the basic struggle for equality of all people, regardless of race, creed, color or nationality.

We respectfully submit that the present petitions should be granted because, whether or not the Communist Party is dedicated to achieving some form of totalitarian government in the United States, these cases involve the basic

question whether there are any constitutional limitations (apart from the privilege against self-incrimination) upon the Congressional power of investigation. The answer to that question will define the powers of Congress in important respects.

In urging that an answer to this question be given, we do not minimize the importance or value of Congressional investigations. Only an informed Congress can wisely decide whether legislation is needed and, if needed, what legislation should be enacted to forestall, with due regard for the Bill of Rights, acts endangering our democratic system of government. We recognize, too, that due respect for a coordinate branch of the Government must require the judiciary to weigh carefully any petition that it restrain the exercise of the Congressional power of investigation. For we recognize that in most instances such restraint must come, if at all, from the political disapproval of the electorate.

Nevertheless, this Court recognized as long ago as 1881 that, in a constitutional democracy, it is essential that the judiciary have some supervision over attempts by Congress to enforce its power of investigation. In *Kilbourn* v. *Thompson,* 103 U. S. 68 (1881), this Court considered at length the much debated question whether Congressional Committees had power to conduct fact-finding investigations. Without deciding that question, and assuming that the power existed, this Court held that the power was subject to certain limitations which the courts could not ignore. Thus, it was held that the Senate or the House of Representatives could require testimony only "in a matter into which that House has jurisdiction to inquire, and * * * that neither of these bodies possesses the general power of making inquiry into the private affairs of the citizen" (103 U. S. at 190), "If they are proceeding in a matter beyond that legitimate cognizance, *we are of opinion that this can be shown* * * * otherwise the limitation is unavailing and the power omnipotent" (*id.* at 197). When the power of a House to inquire is called

"in question • • • it should receive the most careful scrutiny" (*id.* at 192, emphasis supplied).

These principles remain valid today. As recently as 1929, this Court quoted with approval Mr. Justice Field's statement that the *Kilbourn* case "will stand for all time as a bulwark against the invasion of the right of the citizen to protection in his private affairs against the unlimited scrutiny of investigation by a congressional committee." *Sinclair* v. *United States,* 279 U. S. 263, 293 (1929). See also *Interstate Commerce Commission* v. *Brimson,* 153 U. S. 447, 478 (1894); *Harriman* v. *Interstate Commerce Commission,* 211 U. S. 407 (1908); *In re Chapman,* 166 U. S. 661 (1897). In *McGrain* v. *Daugherty,* 273 U. S. 135 (1927), this Court held that the Congressional power "is a limited power, and should be kept within its proper bounds; and, when these are exceeded, a jurisdictional question is presented which is cognizable in the courts" (273 U. S. at 166). Accordingly, it held that "a witness rightfully may refuse to answer where the bounds of the power are exceeded or the questions are not pertinent to the matter under inquiry" (*id.* at 176).

These cases establish that the Congressional power to investigate is limited and that when the power of a court is invoked to implement a challenged exercise of that power, it must determine "for itself" whether the exercise was proper. *Kilbourn* case, *supra,* 103 U. S. at 106. They indicate also that essentially different considerations apply where the issue is whether a witness may be punished because of his refusal to answer a question and where the issue is whether the inquiry itself may be enjoined. The cases establish that the former is justiciable, whether punishment is by criminal conviction or by imprisonment by vote of either House. The latter we conceive to be a matter for political redress and to present a political question outside the jurisdiction of the courts. Accordingly, review and reversal of the convictions in these cases would not prevent the continued functioning of the House Committee on Un-American Activities, but would leave that matter to the wisdom of the House of Representatives.

Since the present cases do involve conviction and punishment, they raise the following questions, among others, which this Court has not yet decided:

1. May a private individual be punished for his refusal to answer questions about his political affiliations, put by a Congressional Committee, regardless of the relevance of the question to an appropriate function of that Committee?

2. May a witness before a Congressional Committee be punished for refusing to answer a question the purpose of which is solely to stigmatize and disgrace him and deprive him of his livelihood?

3. May a witness before a Congressional Committee be punished for his refusal to answer an inquiry concerning his conduct where the sole purpose of the inquiry is to deter that conduct and where the conduct is legal and may not be constitutionally declared illegal.

4. May a witness charged with contempt, in order to prove that Congress has transgressed the limit of its powers, resort to evidence outside the official records of Congress?

5. If a Congressional Committee uses its investigatory powers to further ends which Congress cannot constitutionally achieve by legislation, such as interference with freedom of expression, may the courts lend their aid to such an abuse of power?

These important questions are not answered in the existing decisions of this Court. We believe that they are not satisfactorily answered in the decisions below in these cases or the earlier decisions of the Court of Appeals for the District of Columbia dealing with contempt of Congressional Committees.

To an increasing extent in recent years, Congressional Committees have investigated, publicized, and issued official pronouncements upon the political activities of some of our citizens. The extensive discussion of this development in the daily press, in journals of opinion, and in legal periodicals, reveals a widespread fear that our political liberties are endangered. We believe that that fear will prove unjustified and that the process of Congressional investigation will prove fruitful if it is kept within reasonable limitations. If, on the other hand, Congressional Committees are in effect freed of the Constitutional limitations which restrict the substantive acts of all legislatures, the danger of repression will become very real.

For the reasons stated above, we respectfully submit that the petitions for writs of certiorari in these cases should be granted.

AMERICAN JEWISH CONGRESS,
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NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
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October 19, 1949.